

Amendment No. _____

Signature of Sponsor

FILED

Date _____

Time _____

Clerk _____

Comm. Amdt. _____

AMEND Senate Bill No. 1146*

House Bill No. 1301

by deleting all language after the enacting clause and substituting instead the following:

SECTION 1. Tennessee Code Annotated, Section 68-11-255, is amended by deleting the section and substituting instead the following:

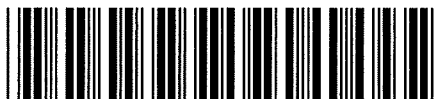
(a) As used in this section and in § 36-1-142, unless the context otherwise requires:

(1) "Facility" means any hospital as defined by § 68-11-201, birthing center as defined by § 68-11-201, community health clinic, out-patient "walk-in" clinic, fire department that is staffed twenty-four (24) hours a day, law enforcement facility that is staffed twenty-four (24) hours a day, not including dispatch centers, or emergency medical services facility;

(2) "Member of the professional medical community" has the meaning provided in § 68-140-102; provided, that the member of the professional medical community is on the premises at the time of a voluntary delivery;

(3) "Newborn safety device" means a device:

(A) Designed to permit a mother to anonymously place a newborn infant aged thirty (30) days or younger in the device with the intent to leave the newborn infant for an emergency medical services provider to remove the newborn infant from the device and take custody of the newborn infant;



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(B) Installed with an adequate dual alarm system connected to the physical location where the device is installed. The dual alarm system must be:

(i) Tested at least once per month to ensure the alarm system is in working order; and

(ii) Visually checked at least twice per day to ensure the alarm system is in working order;

(C) Approved by and located inside a participating police station, fire station, or hospital that is:

(i) Licensed or otherwise legally operating in this state; and

(ii) Staffed continuously on a twenty-four (24) hour basis every day by a licensed emergency medical service provider; and

(D) Located in an area that is conspicuous and visible to a police station, fire station, or hospital staff; and

(4) "Voluntary delivery" means the action of a mother in leaving an unharmed newborn infant aged thirty (30) days or younger on the premises of a facility, with a facility employee or member of the professional medical community at the facility, or in a newborn safety device, without expressing an intention to return for the newborn infant, and failing to visit or seek contact with the newborn infant for a period of thirty (30) days thereafter.

(b) A facility shall receive possession of a newborn infant left on facility premises with a facility employee or member of the professional medical community, or in a newborn safety device, if the newborn infant:

(1) Was born within the preceding thirty-day period, as determined within a reasonable degree of medical certainty;

(2) Is left in an unharmed condition; and

(3) Is voluntarily left by a person who purports to be the newborn infant's mother and who does not express an intention of returning for the newborn infant.

(c) The facility, a facility employee, and a member of the professional medical community at such facility shall inquire, whenever possible, about the medical history of the mother and newborn infant. The facility shall also inform the mother that the mother is not required to respond. Any information obtained concerning the identity of the mother, newborn infant, or other parent must be kept confidential and may be disclosed only to the department of children's services for use consistent with the purposes of this section and §§ 36-1-142 and 36-2-318. If practicable, the facility shall also provide the mother with both orally delivered and written information concerning the requirements of this section and §§ 36-1-142 and 36-2-318 relating to recovery of the newborn infant and abandonment of the newborn infant.

(d)

(1) A mother has the right to remain anonymous, shall not be pursued, and shall not be considered to have endangered a newborn infant under title 39, chapter 15, part 4 if the mother places the newborn infant:

(A)

(i) With an emergency medical services provider;

(ii) At a facility; or

(iii) Inside a newborn safety device; and

(B) Expresses no intent to return to the newborn infant.

(2) This subsection (d) does not apply when indicators of child abuse or child neglect are present.

(e) The facility, a facility employee, and a member of the professional medical community at the facility shall perform any act necessary to protect the physical health and safety of the newborn infant.

(f) The facility employee or member of the professional medical community at the facility who accepts physical custody of a newborn infant, or who physically retrieves a newborn infant from a newborn safety device that meets the requirements of this section, shall immediately arrange for the newborn infant to be taken to the nearest hospital emergency room and shall have implied consent to any and all appropriate medical treatment. The hospital shall immediately notify the department of children's services that the surrendered newborn infant is at the hospital. Upon notification, the department shall immediately assume care, custody, and control of the newborn infant.

(g) Notwithstanding any law to the contrary, an infant delivered to a facility authorized to accept an infant under this section or § 36-1-142, shall be issued by the office of vital records, a birth certificate in accordance with § 68-3-307, which supersedes and invalidates any previously issued birth certificate.

(h) Notwithstanding any law to the contrary, a facility, facility employee, and member of the professional medical community is immune from any criminal or civil liability for damages as a result of any actions taken pursuant to the requirements of this section and § 36-1-142, and no lawsuit shall be predicated thereon. Nothing in this section and § 36-1-142 shall be construed to abrogate any existing standard of care for medical treatment or to preclude a cause of action based upon violation of such existing standard of care for medical treatment.

SECTION 2. Tennessee Code Annotated, Section 36-1-142, is amended by deleting subsections (a) – (c), substituting instead the following, and redesignating the subsequent subsections:

(a) Notwithstanding any other law to the contrary and without complying with the surrender provision of this section, any facility or newborn safety device, as defined in § 68-11-255, shall receive possession of an infant aged thirty (30) days or younger upon the voluntary delivery of the infant by the infant's mother, pursuant to § 68-11-255.

(b) The facility, any facility employee, or any member of the professional medical community at such facility, shall notify the department of children's services immediately after taking possession of an infant under this section. Upon notification, the department or the department's authorized designee shall immediately assume the care, custody, and control of such infant and shall petition the appropriate court for legal custody of such infant.

(c) The facility, a facility employee, or a member of the professional medical community at such facility shall notify the office of vital records of the voluntary delivery of the infant in accordance in with this section and § 68-11-255. The office of vital records shall issue a birth certificate for the child in accordance with § 68-3-307, which will supersede and invalidate any previously issued birth certificate.

(d) Voluntary delivery of an infant pursuant to § 68-11-255 and failure of the mother voluntarily delivering such child to visit or seek contact with such infant for a period of thirty (30) days after the date of delivery, and failure to seek contact with the infant through the department or to revoke the voluntary delivery within thirty (30) days after notice was completed pursuant to this section, which shall cumulatively be no less than ninety (90) days from the date such child was voluntarily delivered to such facility or newborn safety device, shall be a basis for termination of parental rights pursuant to this part.

SECTION 3. Tennessee Code Annotated, Section 36-1-102(1)(A)(v), is amended by deleting the subsection and substituting:

(v) The child, as a newborn infant aged thirty (30) days or younger was voluntarily left at a facility or in a newborn safety device by the child's mother pursuant to § 68-11-255; and, for a period of thirty (30) days after the date of voluntary delivery, the mother failed to visit or seek contact with the infant; and, for a period of thirty (30) days after notice was given under § 36-1-142(f), and no less than ninety (90) days

cumulatively, the mother failed to seek contact with the infant through the department or to revoke her voluntary delivery of the infant;

SECTION 4. This act takes effect upon becoming a law, the public welfare requiring it.

Amendment No. _____

Signature of Sponsor

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Date _____

Time _____

Clerk _____

Comm. Amdt. _____

AMEND Senate Bill No. 562

House Bill No. 233*

by deleting all language after the caption and substituting:

WHEREAS, on June 25, 2015, the United States Supreme Court published an opinion in the matter of *Obergefell v. Hodges*, 576 U.S. 644 (2015), relative to the constitutional questions at issue under the various marriage-related laws of Ohio, Tennessee, Michigan, and Kentucky for which the petitioners sought injunctive relief; and

WHEREAS, the *Obergefell* opinion employed a Fourteenth Amendment substantive due process and equal protection fundamental rights analysis to the constitutional issues raised in the consolidated appeal of four judgments entered by the United States Court of Appeals for the Sixth Circuit; and

WHEREAS, the *Obergefell* opinion sets forth two holdings, the first of which addressed laws for the licensure of marriage (hereinafter "licensure statutes") in Kentucky, Michigan, and Ohio, and the second of which addressed laws denying recognition of marriage licenses issued in other states to same-sex couples, including those statutes in Tennessee that were challenged as part of the consolidated appeal in *Obergefell*; and

WHEREAS, the first holding in the *Obergefell* opinion was that the state marriage licensing statutes at issue were "invalid to the extent they exclude same-sex couples from civil marriage on the same terms and conditions as opposite-sex couples", *Obergefell*, at 675; and

WHEREAS, the second holding in the *Obergefell* opinion regarding the non-recognition laws at issue was that "there is no lawful basis for a state to refuse to recognize a lawful same-sex marriage performed in another state on the ground of its same-sex character," *Obergefell*, at 681; and



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WHEREAS, as a result of the holdings in the *Obergefell* opinion, the plaintiffs in the Tennessee case, *Tanco, et al v. Haslam, et al*, asked the federal district court to hold Article XI, Section 18, of the Tennessee Constitution and Tennessee Code Annotated, § 36-3-113 invalid under the Fourteenth Amendment to the United States Constitution and to permanently enjoin the defendants from enforcing Article XI, Section 18, of the Tennessee Constitution and Tennessee Code Annotated, § 36- 3-113; and

WHEREAS, the federal district court rejected the *Tanco* plaintiffs' proposed order, stating in the court's Memorandum and Order in Support of Final Order and Permanent Injunction that the court could not "rewrite the scope of the lawsuit" in order to address the constitutionality and enforceability of Tennessee's licensure statutes and the effect of Article XI, Section 18, of the Tennessee Constitution and Tennessee Code Annotated, § 36-3-113 on the licensure statutes; and

WHEREAS, on August 24, 2015, the federal district court entered a Final Order and Permanent Injunction against the State of Tennessee in which the court held Article XI, Section 18, of the Tennessee Constitution and Tennessee Code Annotated, § 36-3-113 to be invalid under the Fourteenth Amendment to the United States Constitution "to the extent" that they exclude same-sex couples from recognition of their civil marriage on the same terms and conditions as opposite-sex couples, when the marriage was lawfully entered into outside of Tennessee; and

WHEREAS, by that same Final Order and Permanent Injunction, the federal district court permanently enjoined the defendants from enforcing Article XI, Section 18, of the Tennessee Constitution and Tennessee Code Annotated, § 36-3-113 against the plaintiffs who had married in other states; and

WHEREAS, Tennessee Code Annotated, § 36-3-104(a) expressly limits the issuance of licenses for government-licensed marriages to male and female contracting parties; and

WHEREAS, no state official or constitutional officer has been enjoined from enforcing the provisions of Tennessee Code Annotated, § 36-3-104(a) or the provisions of Tennessee

Code Annotated, § 36-3-113 and Article XI, Section 18 of the Constitution to which it is subject; and

WHEREAS, the continuing enforceability of Article XI, Section 18 of the Tennessee Constitution with respect to the license statutes has created great uncertainty on behalf of a number of Christian ministers, preachers, and pastors with respect to the nature of the marital relationship they attest to having solemnized under the license statutes and marriage recordation forms issued by the executive branch and the civil and criminal liabilities they may incur as a result of non-conformity in the execution and recording of those forms; and

WHEREAS, the due process provisions of the Fourteenth Amendment to the United States Constitution are proscriptive in nature, providing that no state shall make or enforce any law which shall ... deprive any person of life, liberty, or property, without due process of law; and

WHEREAS, in *Ex Parte Commonwealth of Virginia*, 100 U.S. 339 (1880), the United States Supreme Court declared the following in regard to the Fourteenth Amendment to the United States Constitution:

It is not said the *judicial power* of the general government shall extend to enforcing the prohibitions and to protecting the rights and immunities guaranteed. It is not said that branch of the government shall be authorized to declare void any action of a State in violation of the prohibitions. It is the power of Congress which has been enlarged. Congress is authorized to *enforce* the prohibitions by appropriate legislation. Some legislation is contemplated to make the amendments fully effective; and

WHEREAS, nothing in the Fourteenth Amendment to the United States Constitution is prescriptive in nature so as to require a state to affirmatively enact any law; and

WHEREAS, nothing in the Fourteenth Amendment to the United States Constitution, the *Obergefell* opinion, or the federal judicial power compels a state legislature to enact a law, especially a law that the people of the state have constitutionally forbidden state officials to enact; and

WHEREAS, no court has issued or could lawfully issue a writ of mandamus to the legislature of the State of Tennessee requiring it to enact a statutory licensure scheme by which the right to marry under *Obergefell* can be given efficacy or by which any particular official is required directly and by virtue of that writ alone to issue a form of license by which that right to marry can be given efficacy; and

WHEREAS, the General Assembly desires to fulfill the constitutional duties imposed on it in regard to marital relationships solemnized within the state under those provisions of Article XI, Section 18 of the Tennessee Constitution not enjoined by the order of any court of competent jurisdiction, to fulfill its duty to protect the common law rights retained by the people of Tennessee pursuant to the powers retained by the states under the Tenth Amendment as a separate sovereign, and to address the aforesaid uncertainties of ministers, preachers, and pastors by clarifying the operation of historic common law marriage in Tennessee; and

WHEREAS, in furtherance of its stated desires, the General Assembly recognizes that in *Marbury v. Madison*, 5 U.S. 137, 174 (1803), the United States Supreme Court said "[i]t cannot be presumed that any clause in the constitution is intended to be without effect"; and

WHEREAS, the Ninth Amendment to the United States Constitution guarantees the people of Tennessee that the enumeration of certain rights in the Constitution "shall not be construed to deny or disparage others retained by the people"; and

WHEREAS, a source of those other rights is the common law; and

WHEREAS, the United States Supreme Court has repeatedly looked to the common law for its interpretation of rights enumerated in the Bill of Rights and for incorporating rights in the Bill of Rights into the provisions of the Fourteenth Amendment's due process clause; and

WHEREAS, rights at common law are private rights and, as such, it is not only the duty of civil government not to violate them, but affirmatively to secure them; and

WHEREAS, pursuant to the Tenth Amendment to the United States Constitution, the General Assembly, as representatives of the people, has the power, not abrogated by the

Fourteenth Amendment, to secure to the people those rights they possessed prior to ratification of the United States Constitution; and

WHEREAS, the rights the people had prior to ratification of the United States Constitution were the rights of persons at common law; and

WHEREAS, the United States Supreme Court stated that Sir William Blackstone's "Commentaries on the Laws of England not only provided a definitive summary of the common law but was also a primary legal authority for 18th- and 19th-century American lawyers", *Washington v. Glucksberg*, 521 U.S. 702, 712 (1997), and that Blackstone's works "constituted the preeminent authority on English law for the founding generation," *District of Columbia v. Heller*, 554 U.S. 570, 593 (2008), quoting *Alden v. Maine*, 527 U.S. 706, 715, (1999); and

WHEREAS, according to Blackstone's *Commentaries on the Law of England*, at common law there were rights and duties in private economic relations reflecting the rights due to persons as members of society, and standing in various relations to each other, and among these was the marital "contract" recognizing the reciprocal rights and duties of husband and wife; and

WHEREAS, the "historical institution and legal contract solemnizing the relationship of one (1) man and one (1) woman" as referenced in Article XI, Section 18 of the Tennessee Constitution existed prior to any positive enactment of any legislative body; and

WHEREAS, the United States Supreme Court in *Meister v. Moore*, 96 U.S. 76, 78 (1877), addressed the recognition or existence of the common law rights and duties of marriage and stated "[t]hat informal marriage by contract *per verba de praesenti* ... constitutes a marriage at common law there can be no doubt, in view of the adjudications made in this country, from its earliest settlement to the present day. Marriage is everywhere regarded as a civil contract. Statutes in many of the States, it is true, regulate the mode of entering into the contract, but they do not confer the right"; and

WHEREAS, the United States Supreme Court in *Meister v. Moore*, 96 U.S. 76, 79 (1877), described the relationship between common law and state marriage statutes as follows:

"[a] statute may declare that no marriages shall be valid unless they are solemnized in a prescribed manner; but such an enactment is a very different thing from a law requiring all marriages to be entered into in the presence of a magistrate or a clergyman, or that it be preceded by a license, or publication of banns, or be attested by witnesses. Such formal provisions may be construed as merely directory, instead of being treated as destructive of a common-law right to form the marriage relation by words of present assent"; and

WHEREAS, the *Meister* decision recognized and emphasized an antecedent source of obligations upon officials, which legislators and judges declare but do not generate, that has deep roots in the common law; and

WHEREAS, consistent with *Meister*, common law recognizes that there are laws or rules of action founded in those relations of justice that exist in the nature of things and are antecedent to any enactment of positive law; and

WHEREAS, by Article XI, Section 18 of the Tennessee Constitution, the common law understanding of marriage in Tennessee was affirmed as the basis of the marital relationship in Tennessee; and

WHEREAS, in *Erie Railroad Co. v. Tompkins*, 304 U.S. 64, 77 (1938), the Supreme Court said, "Congress has no power to declare substantive rules of common law applicable in a State whether they be local in their nature or 'general,' be they commercial law or a part of the law of torts. And no clause in the Constitution purports to confer such a power upon the federal courts"; and

WHEREAS, the Supreme Court in *Obergefell* addressed itself to "civil marriage" and "enacted law" and did not rule on common law marriage or bring its status within the purview of the Fourteenth Amendment because, by virtue of Section 5 of the Fourteenth Amendment, such a ruling would have been tantamount to saying that Congress has the power to declare substantive rules of common law applicable in a state in contravention of the Supreme Court's *Erie Railroad* decision; and

WHEREAS, making all marital relationships a matter of federal policy "would constitute [the Supreme] court a perpetual censor upon all legislation of the States, on the civil rights of their own citizens, with authority to nullify such as it did not approve as consistent with those rights, as they existed at the time of the adoption of [the Fourteenth] amendment," a position the United States Supreme Court rejected in the *Slaughter-House Cases*, 83 U.S. 36, 76 (1873); and

WHEREAS, in the *Slaughter-House Cases*, 83 U.S. at 78, the Court rejected the inclusion of fundamental rights as national citizenship rights under the Fourteenth Amendment's privileges and immunities clauses for reasons that would apply equally to subjecting common law marriage to the court's substantive due process standards under the Fourteenth Amendment, namely, consequences that "are so serious, so far-reaching and pervading, so great a departure from the structure and spirit of our institutions" that would "fetter and degrade the State governments by subjecting them to the control of Congress, in the exercise of powers heretofore universally conceded to them of the most ordinary and fundamental character" and that would "radically change[] the whole theory of the relations of the State and Federal governments to each other and of both these governments to the people"; and

WHEREAS, the Supreme Court has never repudiated the reasoning that supported the holding in the *Slaughter-House Cases* nor repudiated its holding; and

WHEREAS, in 2011, a unanimous Supreme Court in *Bond v. United States*, 564 U.S. 211(2011) extolled the numerous virtues of the system of dual sovereigns created by our Constitution and on which the holding in the *Slaughter-House Cases* rested; and

WHEREAS, the Supreme Court in *Obergefell* addressed the legislative licensure of civil marriage and did not pretend to have the authority to eradicate, alter, or modify the pre-legal and thus natural institution of marriage between a man and a woman acknowledged in human civilization throughout time and not conceivably subject to elimination by a constitutional amendment contingently appearing in our nation in the nineteenth century and which in no way

purported to deny human realities universally acknowledged and practiced throughout history;
and

WHEREAS, because the Supreme Court in *Obergefell* limited its holding about civil marriage for same-sex couples to what it called "enacted law and public policy", the *Obergefell* Court did not consider, and was not asked or required to consider, the nature of the marital relationship recognized by the common law, *Meister v. Moore*, and the Tennessee Constitution;
and

WHEREAS, the people of the State of Tennessee retain the right to enter into common-law or natural marriage, for the existence of such rights does not depend upon the written charters and judicial opinions in which they are declared, but they are part of the unwritten law, discovered and not commanded by judicial and political officials; and

WHEREAS, no power to regulate the marital relationship between one man and one woman was delegated to the United States by the Constitution, nor prohibited by the Constitution to the states, such power was reserved to the states or to the people by the Tenth Amendment to the United States Constitution; and

WHEREAS, the people of Tennessee have directed the legislature to recognize as a marital relationship, the "historical institution and legal contract solemnizing the relationship between one (1) man and one (1) woman"; and

WHEREAS, the General Assembly has a duty to specify and protect those "other rights" reserved by the Ninth Amendment to the United States Constitution to the people of Tennessee, including the right of a man and a woman to enter into a marital relationship defined in terms of one man and one woman as at common law, and, pursuant to the Tenth Amendment, has the power to discharge its duty; and

WHEREAS, the Ninth Amendment establishes that the enumeration of certain rights set forth in the United States Constitution "shall not be construed to deny or disparage others retained by the people" such as the antecedent right of a man and a woman to enter into a marital contract at common law; and

WHEREAS, the United States Supreme Court has not adjudicated the provisions of the Ninth Amendment and has not opined on the relationship between the Ninth and Fourteenth amendments; and

WHEREAS, this General Assembly earnestly affirms the disagreement expressed by a majority of the 109th General Assembly in House Joint Resolution 529 regarding "the constitutional analysis in *Obergefell v. Hodges* and the judicial imposition of a marriage license law that is contrary to the express will of this body and the vote of the people of Tennessee"; now, therefore,

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF TENNESSEE:

SECTION 1. This act is known and may be cited as the "Marital Contract at Common Law Recording Act."

SECTION 2. Tennessee Code Annotated, Title 36, Chapter 3, is amended by adding the following as a new part:

36-3-201. Findings.

The general assembly finds that:

(1) The existence of a marital relationship between one (1) man and one (1) woman in Tennessee is not dependent on enacted positive law, and the positive law cannot abolish the existence and creation of such a marital relationship but only regulate the mode by which a man and a woman enter into the marital relationship;

(2) The ninth amendment to the United States constitution guarantees to the people of Tennessee the rights held by the people at common law and the right of a man and a woman to enter into a marital relationship as defined at common law in terms of husband and wife will not be denied or disparaged by a construction of any enumerated rights in the constitution;

(3) The fourteenth amendment to the United States constitution did not abrogate the provisions of the ninth amendment or the possession of private rights at common law by the people;

(4) The due process clause of the fifth and fourteenth amendments to the United States constitution guarantees that no person shall be deprived of life, liberty, or property without due process of law;

(5) By virtue of the ninth amendment, the due process clause of the fifth and fourteenth amendments shall not be construed to disparage or deny to the people their rights at common law;

(6) The common law right to liberty is only protected procedurally by the due process and equal protection clauses of the fifth and fourteenth amendments because the right itself was not enumerated and is among the others retained by the people under the ninth amendment;

(7) The powers of the federal judicial branch were not expanded by the provisions of the fourteenth amendment and do not include the creation and enforcement of rights not expressly enumerated in the constitution or that constrict the powers of the states to secure their common law rights unless the manner in which they do so violates the amendment's privileges and immunities clause or denies persons procedural due process or the equal protection of the law;

(8) Under the United States constitution, no power to regulate the common law marital relationship was delegated to the federal government by the constitution, nor prohibited by it to the states, and, therefore, that power was reserved to the states, or to the people by the tenth amendment;

(9) The Tennessee constitution controls the powers of the general assembly and the executive branch, and so long as its provisions do not contravene the powers delegated expressly or by necessary implication to the

federal government by the United States constitution, the provisions of the Tennessee constitution are binding on the legislative and executive branches and are enforceable;

(10) Article XI, Section 18 of the Tennessee constitution recognizes the validity of a marital contract at common law between one (1) man and one (1) woman;

(11) The United States supreme court has not held that a state cannot recognize as valid and enforceable a common law marital relationship; and

(12) The United States supreme court has stated that it has no constitutional authority to declare what the common law of a state is or should be.

36-3-202. Record evidencing marital contract at common law.

(a) One (1) man and one (1) woman may file with the office of the county clerk in the county in which one (1) of the parties to the marital contract resides a document entitled "Record of Marital Contract at Common Law." The document must state:

(1) That the man and woman have declared to each other acceptance of the other as wife and husband, respectively, and affirm the man's and the woman's mutual intention to enter into a marital contract at common law;

(2) The man's and the woman's dates of birth and current address;

(3) The county and, if applicable, the city in which the declaration of marriage and statement of intent to enter into a marital contract at common law was made;

(4) That the marriage is not being contracted with a lineal ancestor or descendant, the lineal ancestor or descendant of either parent, the child of a grandparent, the lineal descendants of husband or wife, as the case may be, or the husband or wife of a parent or lineal descendant;

(5) That at the time the declaration of marriage and statement of intent to enter into a marital contract at common law was made, neither the husband nor the wife was drunk or of unsound mind or acting under force or duress;

(6) That the record of marital contract at common law is not being executed prior to the dissolution of any marriage solemnized prior to the effective date of this act; and if the marriage is dissolved based on the party to a previous marriage having been absent five (5) years and not known to be living, the name of the other party to such previous marriage; and

(7) That each party understands that making a false statement in the document is punishable as perjury, pursuant to § 39-16-702.

(b) The document must be sworn to by the husband and the wife, with the names of the husband and wife printed below the respective signatures.

(c) Both the husband and wife must be present at the time the record of the marital contract at common law is filed with the county clerk, and husband and wife must each provide the county clerk with a form of government-issued photo identification prior to the clerk filing the record of marital contract at common law.

(d) The record of marital contract at common law may be filed at any time after the declaration of marriage and statement of intent has been made.

(e) If either party is incarcerated or otherwise unable to be present in person to provide the information required by subsection (a), the party may submit a record of marital contract at common law which shall contain:

- (1) The information required by subsection (a);
- (2) A copy of the person's government-issued photo identification;
- (3) A statement as to the cause or reason for the person's inability to comply with subsection (c); and
- (4) A notarized statement of a witness to the unavailable party's declaration of acceptance of the other party as husband or wife and statement of

intent to enter into a marital contract at common law, and containing the witness's full legal name, age, and current address.

(f) Failure to record a record of marital contract at common law is not determinative of whether a marital contract at common law exists. The existence and validity of a marital contract at common law is not dependent upon the act of submitting notice or of the state receiving and recording the notice.

(g) The office of vital records shall develop a record of marital contract at common law form consistent with the requirements of this part. The office of vital records shall post the form on its website for use by the general public and shall distribute copies of the form to each county clerk's office in this state.

36-3-203. Recording.

(a) The county clerk is authorized to record a record of marital contract at common law that complies with the requirements of § 36-3-202. The county clerk shall forward the record of marital contract at common law to the office of vital records to be filed and registered with such office.

(b) If a record of marital contract at common law is executed outside Tennessee, then the marital contract at common law, the parties thereto, the parties' property, and the parties' children have the same status as if the marital contract at common law was made in this state if one (1) of the parties to the marital contract at common law was, at the time of the declaration of marriage and statement of intent to enter into a marital contract at common law, a resident of Tennessee.

(c) A county clerk is prohibited from recording a record of marital contract at common law that does not conform with § 36-3-202.

(d) A cause of action for civil or criminal liability may not be brought against a county clerk who in good faith complies with this section.

36-3-204. Second marriage before dissolution or rescission of first prohibited.

A party cannot enter into a valid marital contract at common law before the dissolution of a prior marriage recognized under the law of this state. A record of marital contract at common law involving a person previously married in a lawful civil or common law marriage must not be received for recording in the office of vital records unless a record of the dissolution of the prior marriage or marital contract at common law has been recorded in the office of vital records.

36-3-205. Contest of record of marital contract at common law.

(a) An interested person has the right to contest the recording of a record of marital contract at common law filed after the effective date of this act.

(b) Venue for the petition of contest is proper in the county where the record of marital contract at common law that is the subject of the contest was filed.

(c) The petition must be accompanied by a cost bond in the sum of at least fifty dollars (\$50.00).

(d) All court costs must be adjudged against the losing party.

36-3-206. Severability of contract.

If a court of competent jurisdiction enters a final judgment holding that any statute, benefit, right, or privilege that a party to a marital contract, or the party's heirs, descendants, assigns, or others in privity with the party, would have by virtue of the marital contract, is invalid, unconstitutional, or unenforceable, then the invalidity, unconstitutionality, or unenforceability of the statute or benefit does not affect any other statute, benefit, right, or privilege to which a person may be entitled. The invalidity, unconstitutionality, or unenforceability of a statute, benefit, right, or privilege pertaining to a marital contract does not impair the validity of the marital contract itself. The benefits, rights, and privileges referred to in this part include, but are not limited to, those relating to and referring to the relationships of husband and wife, paternity, and parent and child as they existed at common law.

36-3-207. Use of record of marital contract at common law.

(a) For the purposes of any law in which proof of marriage is necessary in order for a husband or wife to register for, claim, or receive a benefit, right, or privilege accorded a spouse under a provision of state or federal law or rules, regulations, and executive orders made pursuant to state or federal law, the record of marital contract at common law recorded with the county clerk and on record with the office of vital records is prima facie evidence of a common law marital contract, and no official, having accepted the record, is liable to a claim or cause of action if it is later proved that no marital contract existed. A record of marital contract at common law is not conclusive proof of a marital contract.

(b) A person who stands in a third-party relationship to one (1) or more of the parties to a marital contract at common law is not required to recognize a common law marital contract for any purpose unless the common law marital contract has been recorded pursuant to this part. Recording of the record of marital contract at common law pursuant to this part is prima facie evidence of a marital contract but does not preclude the third party from bringing an action pursuant to title 29, chapter 14, for a declaration that a common law marital contract does exist.

(c) A third party described in subsection (b) is not liable for damages to the parties to a common law marital contract or to other third parties in relation to the common law marital contract if the third party relies on the record of marital contract at common law filed pursuant to this part, absent a showing of bad faith by the third party or proof by a preponderance of the evidence that the third party knew that no lawful marital contract had been formed.

SECTION 3. Tennessee Code Annotated, Title 68, Chapter 3, Part 4, is amended by adding the following as a new section:

68-3-403. Recordation of marital contracts at common law.

(a) A record of marital contract at common law submitted to the clerk of court in this state must be filed and registered with the office of vital records if the record has

been completed and submitted to the clerk of court in accordance with title 36, chapter 3, part 2, and this section.

(b) The county clerk where the record of marital contract at common law is presented for recording shall forward to the office of vital records, on or before the tenth day of each calendar month, all records of marital contract at common law presented to the clerk for recording, filing, and registering during the preceding calendar month.

(c) The office of vital records, upon request by one (1) of the parties to the record of marital contract at common law, shall provide to that party a certified copy of the record, indicating the date the record was recorded, filed, and registered.

(d) The office of vital records may charge a fee sufficient to cover the administrative costs related to records of marital contracts at common law submitted for recording.

SECTION 4. Tennessee Code Annotated, Section 68-3-205(d)(2)(A), is amended by deleting the language "or other custodian" and substituting the language ", office of vital records, or other custodian".

SECTION 5. Tennessee Code Annotated, Section 36-5-1301(a), is amended by deleting the language "recreational licenses, or marriage licenses" and substituting the language "recreational licenses, records of marital contracts at common law, or marriage licenses".

SECTION 6. Tennessee Code Annotated, Section 10-7-413(b), is amended by adding the language "records of marital contracts at common law," following the language "deed books,".

SECTION 7. Tennessee Code Annotated, Section 67-4-505 is amended by deleting the language "marriage licenses shall be" and substituting "marriage licenses and records of marriage contracts at common law is".

SECTION 8. Tennessee Code Annotated, Section 67-4-411, is amended by deleting subsection (a) and substituting:

In addition to the privilege tax on records of marital contracts at common law and marriage licenses under § 67-4-505, the county clerk shall collect and forward to the commissioner of revenue a tax of fifteen dollars (\$15.00) for each record of marital contract at common law filed and each marriage license issued.

SECTION 9. Tennessee Code Annotated, Section 16-10-101, is amended by adding the language "; provided, however, in cases involving the definition of common law marriage, the circuit court's jurisdiction is limited to those principles of common law consistent with Article XI, Section 18 of the Tennessee constitution" following the language "upon another tribunal".

SECTION 10. Tennessee Code Annotated, Section 16-11-102, is amended by deleting subsection (a) and substituting:

(a) The chancery court has concurrent jurisdiction, with the circuit court, of all civil causes of action, triable in the circuit court, except for unliquidated damages for injuries to person or character, and except for unliquidated damages for injuries to property not resulting from a breach of oral or written contract and except for cases involving the definition of marriage at common law, in which case the court's jurisdiction is limited to the principles of common law consistent with Article XI, Section 18 of the Tennessee constitution; and no demurrer for want of jurisdiction of the cause of action shall be sustained in the chancery court, except in the cases excepted.

SECTION 11. Tennessee Code Annotated, Section 36-3-103(a), is amended by deleting the language "Before being joined in marriage," and substituting instead "Before being joined in a marriage solemnized pursuant to this part,".

SECTION 12. Tennessee Code Annotated, Section 36-3-303(a), is amended by deleting the language "who solemnizes the rite of matrimony" and substituting instead "who solemnizes the rite of matrimony pursuant to part 1 of this chapter".

SECTION 13. Tennessee Code Annotated, Section 36-3-303(b), is amended by the language "solemnizing marriage as set forth in this part" and substituting instead "solemnizing marriage authorized pursuant to part 1 of this chapter and as set forth in this part".

SECTION 14. Tennessee Code Annotated, Section 36-3-304, is amended by deleting the language "on each license" and substituting instead "on each license issued pursuant to part 1 of this chapter".

SECTION 15. If any provision of this act or its application to any person or circumstance is held invalid, then the invalidity does not affect other provisions or applications of the act that can be given effect without the invalid provision or application, and to that end, the provisions of this act are severable.

SECTION 16. This act takes effect upon becoming a law, the public welfare requiring it.

Amendment No. _____

Signature of Sponsor

FILED

Date _____

Time _____

Clerk _____

Comm. Amdt. _____

AMEND Senate Bill No. 2172*

House Bill No. 2307

by deleting all language after the enacting clause and substituting instead the following:

SECTION 1. Tennessee Code Annotated, Section 37-1-102(b), is amended by adding the following as new subdivisions:

() "Relevant matter" means a matter involving:

(A) Adjudication of a youth as delinquent, unruly, or a traffic violator under juvenile court jurisdiction;

(B) Criminal prosecution of any defendant who is a youth; or

(C) A violation of a municipal code by a youth;

() "Youth" means an individual who is:

(A) Under the jurisdiction of juvenile court; or

(B)

(i) Under eighteen (18) years of age; and

(ii) Under the jurisdiction of another court.

SECTION 2. Tennessee Code Annotated, Section 8-14-105(a), is amended by deleting the first sentence of the subsection and substituting instead the following:

When any person appears without counsel before any court of this state exercising original jurisdiction (whether magistrate, general sessions, municipal, circuit, criminal, or any court empowered to deprive the person of liberty) upon a criminal prosecution involving a possible deprivation of liberty, the court shall inquire whether such person is financially able to employ counsel.



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SECTION 3. Tennessee Code Annotated, Section 8-14-105(d), is amended by adding the following language as new subdivision (d)(3):

(3) Youths, as defined in § 37-1-102, are presumed indigent for the purposes of counsel in any court of this state and, if the court appoints counsel to represent the youth in a relevant matter, as defined in § 37-1-102, such appointment must be made at no cost to the youth or the youth's parent, legal guardian, or legal custodian, or any adult defendant or respondent of the youth who is provided with court-appointed counsel.

SECTION 4. Tennessee Code Annotated, Section 8-21-401(b)(1)(C)(i), is amended by deleting the language "juvenile court,".

SECTION 5. Tennessee Code Annotated, Section 8-21-401(b)(1)(E), is amended by redesignating the current subdivision as subdivision (b)(1)(E)(i) and adding the following new subdivision:

- (ii) The court cost described in subdivision (b)(1)(E)(i) does not apply to:
 - (a) Child support modifications in juvenile delinquency matters; or
 - (b) Child support as paid by parents, legal guardians, or legal custodians to a secure or nonsecure detention facility for costs and services related to the commitment of a child for a delinquency matter to department of children's services custody, except as required pursuant to Title IV of the Social Security Act (42 U.S.C. § 651 et seq.).

SECTION 6. Tennessee Code Annotated, Section 8-21-401(e), is amended by deleting the subsection and substituting instead the following:

- (e) Fees for Specified Proceedings in Juvenile Court.
 - (1) Unless otherwise provided in this section, court clerks in juvenile proceedings shall charge a standard court cost of one hundred dollars (\$100). This fee applies to all juvenile proceedings, including, but not limited to, requests to establish support or nonsupport, proceedings related to parentage, paternity

cases, and legitimations, and except those involving relevant matters as defined in § 37-1-102.

(2)

(A) For requests for modification of child support, the clerk shall charge a fee of seventy-five dollars (\$75.00).

(B) The fee described in this subdivision (e)(2)(A) does not apply to child support modifications in juvenile delinquency matters or to child support for costs and services related to the commitment of a child for a delinquency matter to department of children's services custody, except as required pursuant to Title IV of the Social Security Act (42 U.S.C. § 651 et seq.).

(3)

(A) In the following actions, the clerk of the juvenile court shall charge a fee of forty-two dollars (\$42.00): consent orders, voluntary motions to grant custody, marriage waivers, attachment pro corpus, and bench warrants.

(B) Subdivision (e)(3)(A) does not apply to youths, as defined in § 37-1-102, or parents, legal guardians, or legal custodians of youths in relevant matters, as defined in § 37-1-102.

(4)

(A) In the following actions, the clerk of the juvenile court shall charge a fee of twenty-five dollars (\$25.00): restricted licenses, drug screenings, entering orders of appeal and taking appeal bonds, entering judgments from appellate court, entering orders allowing rehearing, and special pleas.

(B) Subdivision (e)(4)(A) does not apply to youths, as defined in § 37-1-102, or parents, legal guardians, or legal custodians of youths in relevant matters, as defined in § 37-1-102.

SECTION 7. Tennessee Code Annotated, Section 8-21-401(i), is amended by deleting the language "juvenile,".

SECTION 8. Tennessee Code Annotated, Section 8-21-401, is amended by adding the following language as a new subsection (p):

(p) Subdivisions (a)-(o) do not apply to youths, as defined in § 37-1-102, or parents, legal guardians, or legal custodians of youths in relevant matters, as defined in § 37-1-102, in any court of this state.

SECTION 9. Tennessee Code Annotated, Section 8-21-402, is amended by deleting the section and substituting instead:

The clerks of all special juvenile courts and all courts of general sessions having juvenile court jurisdiction shall not collect any fee from any person who:

(1) Enters a plea of guilty;

(2) Enters a plea of nolo contendere;

(3) Is adjudicated at trial, or whose case is handled under pretrial diversion or retirement;

(4) Is found in violation of the terms and conditions of a probationary or valid court order; or

(5) Is a youth, as defined in § 37-1-102, legal guardian, or legal custodian of a youth in a relevant matter, as defined in § 37-1-102.

SECTION 10. Tennessee Code Annotated, Section 8-21-403, is amended by adding the following new subsection:

(c) The clerk's fee described in subsection (a) does not apply to child support payments in relation to juvenile delinquency matters or to child support as paid by parents, legal guardians, or legal custodians for costs and services related to the

commitment of a child for a delinquency matter to department of children's services custody, except as required pursuant to Title IV of the Social Security Act (42 U.S.C. § 651 et seq.).

SECTION 11. Tennessee Code Annotated, Section 16-15-706, is amended by redesignating the current language as subsection (a) and adding the following new subsection:

(b) The fee for a guardian ad litem described in subsection (a) does not apply to youths, as defined in § 37-1-102, or parents, legal guardians, or legal custodians of youths in relevant matters, as defined in § 37-1-102, in any court of this state.

SECTION 12. Tennessee Code Annotated, Section 16-20-106, is amended by deleting the language "and juvenile courts" wherever it appears and adding the following new subsection:

(h) The litigation taxes described in subsections (a)-(g) do not apply to youths, as defined in § 37-1-102, or parents, legal guardians, or legal custodians of youths in relevant matters, as defined in § 37-1-102, in any court of this state.

SECTION 13. Tennessee Code Annotated, Section 37-1-126(c), is amended by deleting the subsection and substituting instead the following:

(c) Parents, legal custodians, or guardians, or any adult defendants or respondents whose child is provided with court-appointed counsel pursuant to this section, or who themselves are provided with court-appointed counsel pursuant to this section, shall not be assessed administrative fees for court-appointed counsel for the child or themselves, or the appointment of a guardian ad litem.

SECTION 14. Tennessee Code Annotated, Section 37-1-138, is amended by adding the following subsection:

(d) Subsection (a) does not apply as related to juveniles committed for a delinquency matter to department of children's services custody, except as required pursuant to Title IV of the Social Security Act (42 U.S.C. § 651 et seq.).

SECTION 15. Tennessee Code Annotated, Section 37-1-146(b), is amended by deleting the subsection and substituting instead the following:

(b)

(1) If the court finds that the child violated a traffic law or ordinance, then the court may adjudicate the child to be a traffic violator, and the court may make one (1) or any combination of the following decisions:

(A) Suspend and hold the child's driver license for a specified or indefinite time;

(B) Limit the child's driving privileges as an order of the court;

(C) Order the child to attend traffic school, if available, or to receive driving instructions;

(D) Order the child to perform community service work in lieu of a fine, at no cost to the child or the parent, legal guardian, or legal custodian of the child; or

(E) Place the child on probation pursuant to § 37-1-131(a)(2).

(2) The court shall not charge any administrative fee to the child or the parent, legal guardian, or legal custodian of the child for participation in traffic school or driving instructions as described in subdivision (b)(1)(C).

SECTION 16. Tennessee Code Annotated, Section 37-1-150(d), is amended by deleting subsections (d) and (g) in their entireties and adding the following new subsection:

() This section does not apply to youths, as defined in § 37-1-102, or parents, legal guardians, or legal custodians of youths in relevant matters, as defined in § 37-1-102, in any court of this state.

SECTION 17. Tennessee Code Annotated, Section 37-1-151, is amended by adding the following new subsection:

(f) Subsections (a)-(e) do not apply to child support modifications in juvenile delinquency matters or to child support for costs and services related to the commitment

of a child for a delinquency matter to department of children's services custody, except as required pursuant to Title IV of the Social Security Act (42 U.S.C. § 651 et seq.).

SECTION 18. Tennessee Code Annotated, Section 37-1-163, is amended by deleting subsection (a) and substituting instead the following:

(a) Financial obligations shall not be assessed against a child, or the parent, legal custodian, or legal guardian of the child in a delinquent or unruly case, including in any order of disposition under § 37-1-131 or § 37-1-132, though this does not affect the assessment of restitution pursuant to § 37-1-131(b).

SECTION 19. Tennessee Code Annotated, Section 37-1-163, is amended by deleting the language "any financial obligations or" wherever it appears in subsections (b) and (c).

SECTION 20. Tennessee Code Annotated, Section 37-1-163, is amended by deleting subsections (d) and (e) and substituting instead the following:

(d) The court shall consider the child's parents', legal custodians', or guardians' financial ability to pay in determining the amount of restitution assessed by the state or county as described in this part. The court may decline to assess restitution if the court determines that assessment would pose financial hardship to the parents, legal custodians, or guardians.

(e) Any restitution ordered shall not be referred to any collection service as defined by § 62-20-102.

SECTION 21. Tennessee Code Annotated, Section 37-1-209, is amended by deleting the section and substituting instead the following:

All moneys derived from fines assessed by the judge and collected by the clerk must be paid to the county, or, in the case of a juvenile court serving more than one (1) county, revenue must be disbursed in accordance with the contract between the various county governments.

SECTION 22. Tennessee Code Annotated, Section 37-5-205, is amended by adding the following new subsection (d):

(d) Neither a child nor the parent, legal guardian, or legal custodian of such child is financially liable for any of the fees, costs, or expenses described in subsections (a)-(c).

SECTION 23. Tennessee Code Annotated, Section 37-11-103, is amended by deleting the section in its entirety.

SECTION 24. Tennessee Code Annotated, Section 40-14-202(b), is amended by redesignating the current language as subdivision (b)(1) and adding the following new subdivision (b)(2):

(2) Youths, as defined in § 37-1-102, are presumed indigent for the purposes of counsel in any court of this state and, if the court appoints counsel to represent the youth in a relevant matter, as defined in § 37-1-102, such appointment must be made at no cost to the youth or a parent, legal custodian, or legal guardian, or any adult defendant or respondent of the youth who is provided with court-appointed counsel.

SECTION 25. Tennessee Code Annotated, Section 41-6-105, is amended by deleting the section and substituting instead the following:

(a) When an inmate is employed pursuant to this part, the department shall require that the inmate turn over wages and salaries when received. The money must be deposited in a trust account and a ledger must be maintained reflecting the status of each individual account.

(b)

(1) Except as provided in subdivision (b)(2), each inmate is liable for reasonable charges for board as fixed by the commissioner of correction.

(2) Subdivision (b)(1) does not apply to youths, as defined in § 37-1-102, or parents, legal guardians, or legal custodians of youths in relevant matters, as defined in § 37-1-102.

SECTION 26. Tennessee Code Annotated, Section 49-6-3009(g), is amended by deleting the language "the judge may assess a fine of up to fifty dollars (\$50.00) or five (5)

hours of community service" and substituting instead the language "the judge may order five (5) hours of community service".

SECTION 27. Tennessee Code Annotated, Section 49-6-3009(g), is amended by adding the following language at the end of the subsection:

The judge shall not assess a fine against the parent, legal guardian, or legal custodian of the student in the event a student in kindergarten through grade twelve (K-12) is adjudicated to be unruly as a result of accumulating five (5) days or more of unexcused absences during any school year.

SECTION 28. Tennessee Code Annotated, Section 49-6-3011, is amended by deleting the section in its entirety.

SECTION 29. Tennessee Code Annotated, Section 49-6-3021(c)(2), is amended by deleting the language "the judge may assess a fine of up to fifty dollars (\$50.00) or five (5) hours of community service" and substituting instead the language "the judge may order five (5) hours of community service".

SECTION 30. Tennessee Code Annotated, Section 49-6-3021(c)(2), is amended by adding the following language at the end of the subsection:

The judge may not assess a fine to the child or the parent, legal guardian, or legal custodian of the child in the event a student in kindergarten through grade twelve (K-12) is adjudicated to be unruly as a result of unexcused absences from remedial instruction.

SECTION 31. Tennessee Code Annotated, Section 55-10-705(a)(3), is amended by deleting the language ", together with an application fee of twenty dollars (\$20.00),".

SECTION 32. Tennessee Code Annotated, Section 55-10-706(a), is amended by deleting the subsection and substituting instead the following:

(a) On the expiration of the applicable period of denial set out in § 55-10-702(a), if a person has not become eligible to receive a license under § 55-10-703, then, for a person to be eligible to receive a Tennessee driver license, the person must comply with all testing requirements and pay applicable driver license fees.

SECTION 33. Tennessee Code Annotated, Section 67-4-601, is amended by adding the following language as a new subsection (k):

(k) The litigation taxes described in subsections (a)-(j) do not apply to youths, as defined in § 37-1-102, or parents, legal guardians, or legal custodians in matters involving any defendant who is a youth.

SECTION 34. Tennessee Code Annotated, Section 67-4-602, is amended by adding the following language as a new subsection (n):

(n) The privilege taxes described in subsections (a)-(m) do not apply to youths, as defined in § 37-1-102, or parents, legal guardians, or legal custodians in matters involving any defendant who is a youth.

SECTION 35. Tennessee Code Annotated, Title 67, Chapter 4, Part 6, is amended by adding the following new section:

No county or municipality in this state is authorized to levy fines, fees, costs, or taxes to youths, as defined in § 37-1-102, or parents, legal guardians, or legal custodians in matters involving any defendant who is a youth.

SECTION 36. Tennessee Code Annotated, Title 40, Chapter 24, is amended by adding the following new section:

In any relevant matter, as defined in § 37-1-102, in any court of this state, no youth, as defined in § 37-1-102, or parent, legal guardian, or legal custodian of a youth shall be ordered to pay fines, fees, costs, or a combination of fines, fees, and costs as described in § 8-21-901, § 8-26-105, § 8-26-107, § 16-3-910, § 16-15-713, § 16-15-718, § 16-15-5006, § 16-15-5008, § 16-18-305(a), § 16-18-305(b), § 16-18-306, § 16-22-109, § 38-6-103(d)(1)(A), § 39-13-708, § 39-17-417, § 39-17-420, § 39-17-439, § 40-3-203(a), § 40-3-203(d), § 40-3-204(b), § 40-3-206, § 40-7-122, § 40-14-103(b), § 40-14-202(f), § 40-14-210(a), § 40-24-101(b), § 40-24-107(a)(1)-(5), § 40-24-108(a), § 40-24-109, § 40-25-107, § 40-35-111(b), § 40-35-111(c), § 40-35-313(a)(1), § 40-35-320(a), § 40-39-305, § 41-2-112, § 41-2-129(b)(1), § 41-2-129(b)(3)-(4), § 41-2-129(c)(2), § 41-2-

129(c)(4), § 41-2-129(c)(6), § 41-2-139, § 41-4-142(a)-(b), § 41-6-106, § 41-6-206(a), § 41-6-303(a), § 41-7-104(c), § 41-11-103, § 41-21-105, § 41-21-217, § 41-21-510(b)-(c), § 41-21-511, § 41-21-807(b), § 41-21-808(b), § 49-6-3003(c), § 49-6-3203(b)-(c), § 55-10-207(e), § 55-10-403, § 55-10-413, § 55-10-703, § 57-3-412(a)(4), § 57-5-301(d)(3)(A), § 57-5-301(d)(3)(B), § 57-9-202(b)(3), § 62-38-211(d), or § 69-9-219(c)(7).

SECTION 37. Any judgment entered prior to July 1, 2022, for the fines, fees, costs, or taxes herein, is null, void, and uncollectible on July 1, 2022, if there remains a balance due, including post-judgment interest, penalties, or collection expenses, on the judgment as of that date; and if this act removes or repeals the underlying statutory authority for or would prohibit the assessment of the fine, fee, cost, or tax included in the judgment if the judgment had been entered after July 1, 2022. Any civil judgment, lien, or other legal encumbrance associated with these judgments is vacated. The court administrator may not charge any fees associated with the satisfaction of a judgment described in this section. By January 1, 2023, the administrative office of the courts, in consultation with state and municipal agencies, shall establish procedures to vacate and discharge all unpaid outstanding balances and all unsatisfied civil judgments, existing liens, and existing legal encumbrances that are subject to this section. The procedures shall not require a youth, as defined in Section 1 or the parent, legal guardian, or legal custodian of a youth to affirmatively act to initiate the procedures.

SECTION 38. This act does not prohibit a youth, as defined in Section 1, from being eligible for a diversion program if the youth is otherwise eligible. Judges shall offer a diversion alternative or program in any case where the judge otherwise would do so, including in the absence of the assessment of any fine, fee, or cost.

SECTION 39. If any provision of this act or its application to any person or circumstance is held invalid, then the invalidity does not affect other provisions or applications of the act that can be given effect without the invalid provision or application, and to that end, the provisions of this act are severable.

SECTION 40. This act takes effect July 1, 2022, the public welfare requiring it.